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Supreme Court of the United States

OCTOBER TERM, 1928.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 226. 6

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* Leon Gonzalez,

Petitioner,

v.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,

Respondent.

MEMORANDUM IN REPLY FOR PETITIONER.

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Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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MEMORANDUM IN REPLY FOR PETITIONER.

The exhaustive Brief of the learned counsel for Respondent presents the case in such a manner as to make a short Memorandum in Reply both appropriate and necessary. For the sake of brevity, such Reply will be presented under a series of specific headings, each dealing with some particular question involved or some specific phase of the case or aspect of the argument. No attempt will be made to cover the entire case in this Reply, and the absence of mention of any particular point or argument in Respondent's Brief is not to be taken as an admission of its validity, but rather as indicating a belief that in that respect the subject has been sufficiently dealt with in Petitioner's main Brief.

Respondent's counsel endeavors to find "instances of errors and omissions of fact in plaintiff's Brief" (Respondent's Brief, p. 27). It is submitted that none of the "instances" constitutes either an error of fact or an omission of fact. If meticulous criticism is in order, it may be remarked that the translations contained in the Appendix to Respondent's Brief of Canons 108, 976, 1364 and 1442 (pp. 10, 11, 12) are neither accurate nor complete, and attention is invited to the extraordinary translation of "*litterati et idonei*" as "lettered and filled" (possibly a misprint for "fitted") and of "*turpis ambitionis*" as "the torpitude of ambition" (App., p. 31).

Some confusion may be possibly caused by the fact that the present *Codex Juris Canonici* is sometimes referred to as the Revision of 1917 and at other times as that of 1918. This is explained by the fact that it was promulgated in 1917, to become effective on May 19th, 1918. In Petitioner's Brief and in the Opinions of the Court below it is referred to as the Revision of 1918. The Respondent usually refers to it as the Code of 1917. It is assuredly a monumental work, and it is unfortunate that, although a part of it is available in an English translation, that portion of it dealing with Benefices appears not to have been published in English up to the present time.

After the filing of the Record in this court, Adelaida Gonzalez, the mother and guardian *ad litem* of the Petitioner, died, and Leon Gonzalez, an uncle, was appointed guardian *ad litem* by the Court of First Instance in Manila. Thereafter, by order of this Court, made on January 16, 1929, he was duly substituted here, and the title of the cause amended accordingly.

I. The Fundamental Issues Involved.

Respondent's counsel subtly seeks to divert the attention of the Court from the underlying questions presented by devoting great erudition and elaborate dialectic to certain of the less crucial aspects of the case and taking largely for granted the basic questions now before this Court. As presented to this Court, the *crux* of the case is not whether the Petitioner is entitled to a writ of mandamus requiring the Respondent to institute him as Chaplain, but (1) whether the Petitioner, either individually or as the representative of a Class, is entitled to some relief in respect to the balance of the income of the Foundation, after payment for the prescribed Masses, and (2) whether the Respondent, with or without the authority of the Holy See, is entitled to devote such surplus income to the general purposes of the Church, educational or otherwise, or should be required to account for it to the descendants of the Foundress and apply it to the purposes of the Foundation.

While full consideration of the facts is necessary to a proper disposition of this question, it remains fundamentally a question of law. The effort of Respondent's Counsel to inject questions of fact into the case (Respondent's Brief, p. 27) finds no support in the Opinions below or in the Record. The Supreme Court of the Philippine Islands did not undertake to disregard, reverse or set aside any of the findings of fact of the Trial Court. The concurring Opinion of Mr. Justice Malcolm expressly states: "There can be no dispute on any material fact" (Rec., p. 343), and neither the Opinion of Mr. Justice Street nor the dissenting Opinion of Mr. Justice Johns refers to any matter of fact as being in controversy.

It was not intended to suggest by Petitioner's Brief that Respondent had not caused the Masses provided for by the Will to be said, although the testimony on this subject was somewhat vague and inconclusive (Rec., pp. 115-117), or that the balance of the income, manifestly constituting the bulk thereof, had been personally appropriated by the Respondent. On the contrary, Petitioner's Brief specifically referred to p. 324 of the Record, where it is stated that

> "all of the income thus received, less the expenses of administration and cost of the Masses, has been applied to the purposes of education, beneficence and charity."

Respondent also seeks to raise a question of fact as to the qualifications required of Chaplains prior to 1918. The Court below found no such difficulty. In the Opinion of Mr. Justice Street it is stated, at p. 324 of the Record, that since the Council of Trent

> "no person who has received the first tonsure or who has already been ordained in minority is eligible to a benefice before his fourteenth year",

and that

> "with this exception there seems to have been no ecclesiastical law or ordinance of the Church in force at the time the Chaplaincy in question was founded, prescribing ecclesiastical qualifications for incumbents of the office of Chaplain",

and again, at p. 336:

> "Under the law of the Church as it stood when this Chaplaincy was created, no ecclesiastical qualifications were required in a candidate for appointment to the office of Chaplain."

As to the individual qualifications of Petitioner, there was no evidence controverting the testimony that he possesses

> "more learning and intelligence than any previous Chaplain at the time of his appointment",

as summed up in the dissenting Opinion of Mr. Justice Johns (Rec., p. 373). In the concurring Opinion of Mr. Justice Malcolm it is expressly stated:

> "Broadly speaking, Raul Rogerio Gonzalez met the requirements of the Church before the Canon Law of 1918 went into effect" (Rec., p. 347),

as already quoted in Petitioner's Brief, p. 8.

The Catholic Encyclopedia, quoted by Respondent (Respondent's Brief, App. p. 38), states:

> "Before the Council of Trent a simple benefice could lawfully be conferred on a cleric as early as his seventh year."

That one could be a "cleric" when just past his sixth birthday shows that no great degree of learning was requisite, and even at thirteen no very profound study of "Christian Doctrine" or any other subject could have been accomplished.

That even after the Council of Trent the knowledge of "Christian Doctrine", upon which Respondent lays so much stress (Respondent's Brief, p. 54) as a qualification for appointment to a Chaplaincy, was not required to be very extensive also appears from the Catholic Encyclopedia as further quoted in the Appendix to Respondent's Brief. Any child brought up in a Catholic household would presumably have been instructed in "The Apostles' Creed, the

Sacraments; the Ten Commandments; and the Lord's Prayer" (App., p. 49). All that was required for the tonsure was that "the recipient must have learnt the rudiments of the Faith and be able to read and write" (App., p. 51).

That the "first tonsure" might be given as an incident to appointment to a Benefice appears from the quotation from the Papal Bull of May 13, 1723, found in the Opinion of Dr. Bustamente at p. 23 of the Appendix to Respondent's Brief, prescribing that

> "none of the Archbishops and Bishops of the Kingdom of Spain shall admit in future for the first tonsure *any except those to whom an ecclesiastical Benefice has to be conferred immediately,* or to those of whom it is evident that they are engaged in studies so that they appear to be already on the way to receive minor orders and later major orders; or, finally to those they deem it advisable to delegate to the service and ministry of some church."

Prior to the Revision of 1918, therefore, any objection as to lack of tonsure could have been cured coincidentally with the appointment.

Only these simple requirements could have been contemplated by the Foundress. Her descendants should not be deprived of the support which she intended to provide for them by reason of any higher standard subsequently set for the performance of functions which they are not called upon to perform in their own persons.

II. The Nature of the Chaplaincy Involved.

Petitioner does not question that under the language of the Will and the Deed of Foundation the Chaplaincy here in question was of the variety known as "*colativa*", but the authorities assembled by Respondent's counsel with

such learning and industry in the Appendix to his Brief show that the definition of this term is subject to considerable variation. According to the definition quoted at p. 4 from the Catholic Encyclopedia the test is "that the bishop is to erect the foundation into a benefice". According to Taunton's "Law of the Church" (Appendix, p. 33):

> "A collative benefice is one that is conferred at the absolute and free will of the prelate."

According to Alcubilla, as quoted on p. 6 of Respondent's Brief:

> "A collative Chaplaincy is that instituted with the intervention of the ecclesiastical authority and requires a title of ordination. • • • When the foundation calls for relatives of the founder • • • to enjoy the chaplaincy, the latter is called *colativa familiar;* when individuals of a certain family are not called to the possession, but the patron is authorized to appoint, then the Chaplaincy is called *colativa simple* or *gentilicia.*"

Here again another difference of definition is found, since the Catholic Encyclopedia, quoted in the Appendix at p. 42, says:—

> "Hereditary or family chaplaincies are those to which, by the will of the founder, the holder of the benefice is to be nominated by the testator's heirs or assigns."

Thus, according to one definition, in a collative family Chaplaincy the Bishop not only institutes, but nominates, while under another the Bishop's appointment is limited to those nominated *out of* a certain family, or by still another to those nominated *by* the appropriate member or members

of a certain family. The Canon Law is thus seen to present ambiguities and uncertainties no less than the Common Law.

Respondent's Counsel also contends that this Chaplaincy had no hereditary character (Respondent's Brief, pp. 46-48). The best answer to this may be found in the statement of the Rector or President of San Juan de Letran College that petitioner "is entitled to it, according to the Will of the deceased" (Rec., p. 58), and his testimony that there had been submitted to him "a family tree from which it appeared that the boy Raul Rogerio Gonzalez was the only legitimate heir to this Chaplaincy" (Rec., p. 221).

This Dominican Father, in 1922 Rector of the College of San Juan de Letran, and at the time of the trial Vice-Rector of the University of Santo Tomas at Manila (Rec., p. 211), called as a witness by the Respondent, may well be regarded as knowing more about the heritable quality of an ancient Chaplaincy in the Philippine Islands than even the learned counsel for the Respondent. Just what rights attach to such heirship and how they may be enforced or defeated are other questions which will be further discussed.

Respondent's Counsel also contends that the history of the Chaplaincy should be disregarded and the practical construction placed upon the instruments of foundation for a hundred years ignored (Respt.'s Brief, p. 50). But the very cases he cites hold that contemporaneous construction and long usage are properly resorted to when there is any doubt or uncertainty as to the terms or the construction of the original foundation. See especially *Attorney General* vs. *Rochester,* 5 DeG. M. & G. 797, at p. 822; *Drummond* vs. *Attorney General,* 2 H. L. Cases 837, at p. 861; *Attorney General* vs. *Trinity Church,* 91 Mass. 422, at p. 447.

It may be that hereditary rights in such a Foundation seem today somewhat anomalous, but it must be remembered that in the Philippine Islands when ceded to the United States there were more than vestigial traces of the Middle Ages, when Benefices of this nature were a favorite form of provision for younger sons and collateral relatives.

In the case at bar the original investigation by the Promotor Fiscal was largely to determine "that the said *congrua* (pension, living or maintenance) * * * be declared sufficient" (Rec., p. 52); that is to say, sufficient for the support of the Chaplain for whom, and for whose successors of her blood, the Foundress desired to provide.

In *City of Manila* vs. *Archbishop of Manila,* 36 Phil. Rep. 815, the ancient Chaplaincy there in suit was described as "still being administered" by the Archbishop "in accordance with the terms of said Will for the benefit of the real beneficiary as was intended by the original owner."

The details do not appear, but it is significant that it was recognized that after two hundred years there was still a "real beneficiary * * * intended by the original owner".

III. The Disposition of the So-called "Surplus" Income.

Respondent's counsel argues that the incumbent of a Benefice was entitled only to his reasonable support out of the income and that therefore the Respondent was justified in devoting the so-called "surplus" income of this Foundation to the general purposes of the Church. This is contrary to Respondent's own citations. Dr. Bustamente says (Appendix to Respondent's Brief, p. 25):—

> "In general, the proceeds of every ecclesiastical benefice should be received by the beneficiary who, in the first place, has to fulfill the obligations of such

benefice and attend later to what the Canonical Law calls his 'congrua'—that is his reasonable sustenance; in other words, the material needs or essentials of life of the chaplain.

The residue, if there be any, must be devoted *by the beneficiary* to pious uses".

So, in Taunton's "Law of the Church" quoted at p. 32 of the Appendix:

> "The benefice consists in the right to the income, not to the capital, which remains under the *dominium* of the Church. Hence the holder of a benefice has a direct *dominium* over the income or *fructus* and, although he may have private means, he can use it to provide the expenses of living in the manner which is considered honest and fitting. If anything remains over and above this the holder is bound to devote the superfluity of this benefit to the poor or to other pious uses".

In like manner in the Catholic Encyclopedia, quoted on p. 40 of the Appendix, it is said:

> "Formerly, this superfluous revenue could not be disposed of by Will, but a universal custom has long since authorized such testamentary disposal, provided it be made in favor of pious causes or of the poor. In fact in most places on account of the difficulty of distinguishing a cleric's patrimonial property from his beneficiary revenue, the right is recognized to dispose freely by will of all property."

Thus it is not for the ecclesiastical authorities to determine the application of the "surplus" income and to distribute it, but for the beneficiary himself, who is to be his own almoner.

In *Capellania de Tambobong* vs. *Cruz*, 9 Phil. Rep. 145, the Chaplaincy itself was held to be entitled to register its title to the property, notwithstanding the fact that

> "it would be impossible to apply to the saying of the Masses, provided for in the deed, the rents of all the lands belonging to the Capellania."

There is no suggestion that in that case the surplus was turned over to the general purposes of the Church.

IV. Discussion of Certain Authorities.

It would unduly expand this Memorandum to attempt to analyze and distinguish all of the many decisions and other authorities cited by Respondent's counsel. Some of them are cited in support of general propositions of law which are not in controversy, as, for example, that the heirs of the donor of a general public charity have no individual interest in the performance of its obligations and in general no right of reverter in the property. (Respt.'s Brief, p. 61). Some of them, it is submitted, have no relevance to the case at bar, as for example the cases on pp. 44 and 58 of the Brief, dealing with the administration of funds given generally and without limitation to churches or other bodies for their general corporate purposes, or with the *cy-pres* doctrine as applied to public charities having no private beneficiaries of the Founder's kin, or with the rights of a clergyman to his stipend, arising merely out of his ecclesiastical *status*, without reference to any specific endowment or trust relation.

As to certain decisions, however, on which Respondent's counsel lays particular emphasis, a brief discussion is appropriate.

Respondent's counsel invokes *Shepard* vs. *Barkley*, 247 U. S. 1 (Respt.'s Brief, pp. 43, 45), but this decision is by no means in point, as more fully appears from the reports of it in the Courts below. In the Circuit Court of Appeals it is reported under the title of *Duvall* vs. *Synod of Kansas of Presbyterian Church*, 222 Fed. 669, and the Opinion of the District Court is there expressly approved. In the District Court it is reported under the title of *Barkley* vs. *Hayes*, 208 Fed. 319, and it is said at p. 327:—

> "As we have seen, the property in dispute was acquired for the *general use* of the body for religious purposes *with no other limitation.*"

In the case at bar, the property was not acquired by the Church for general religious purposes, but for the specific purpose of endowing a Chaplaincy for the material support of successive members of a certain family and for the spiritual benefit of the Masses to be said for the souls of certain departed members of such family.

Respondent's counsel quotes at length (Respt.'s Brief, p. 44) from *Jones, Bishop of Porto Rico* vs. *Registrar of Property*, 18 Porto Rico, 124. What was actually held in that case was that the cancellation by the Bishop of an annuity in favor of a nun was entitled to registry because the annuity, once recorded in the name of the nun "becomes *ipso jure* recorded in the name of the Convent," under the well established rule of Canon Law that all the property of a "religious", both present and future, vests in his or her Monastery or Convent.

Respondent's counsel quotes from *Gonzalez* vs. *Harty*, 32 Phil. Rep. 328 (Respondent's Brief, pp. 37, 38), also cited by Petitioner (Petitioner's Brief, pp. 15, 16). It is to be noted that only two of the other Justices concurred

in the Opinion and that one-half of the Court (three Justices) concurred in the result, solely upon the ground that the plaintiff was concluded by the receipt which he had given.

Respondent's counsel (Respondent's Brief, pp. 21, 22) endeavors to make light of the registration of the property constituting the Foundation of the Chaplaincy in the name of the Archbishop. He fails to take into account the requirements of the Land Registration Act in force in the Philippine Islands. That statute requires in §40 that the decree of registration

> "shall set forth the estate of the owner and also in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments and other encumbrances".

§65 of the Act also specifically provides for the insertion in the registration of a reference to any trust to which the property may be subject.

The effect of these provisions is stated in the treatise on "Land Registration in the Philippine Islands", by Enrique Altavas, published in Manila in 1923, at p. 80, Par. 91, as follows:—

> "As to encumbrances or rights, they must be stated in the decree for the protection of the interested parties."

The reference in the Registry certificate (Rec., p. 68) "to such of the encumbrances mentioned in Article 39 of said law as may be subsisting" falls far short of complying with these statutory requirements. The "encumbrances mentioned in Article 39," are (1) certain liens, claims or rights under the laws or Constitution of the United States

or of the Philippine Islands; (2) certain taxes, and (3) certain easements for public highways. Aside from these, it is prescribed that a person receiving a certificate of title for value in good faith "shall hold the same free of all encumbrances except those noted in said certificate." If, for any legitimate reasons of ecclesiastical procedure, or otherwise, it was deemed proper to register the property in the name of the Archbishop rather than in the name of the Chaplaincy itself, the registration should at least have shown upon its face that the property was devoted to this particular use and was not a part of the properties dedicated to the general use of the Church for religious purposes, as was the case in *Shepard* vs. *Barkley, supra,* and also in *Mormon Church* vs. *United States,* 136 U. S. 1, cited by Respondent's counsel at pages 57 and 60 of his Brief.

Certain of the most important and significant authorities and arguments relied on by Petitioner are wholly ignored in Respondent's Brief, from which it may be inferred that Respondent's counsel finds no answer to them. Notable among these omissions are the following:—

(a) The Free Church Case (Petitioner's Brief, pp. 19, 20), vindicating the power of the Civil Courts to prevent the diversion of ecclesiastical endowments from the specific purposes for which they were originally furnished.

(b) The distinction between a Chaplaincy in which the Chaplain was required by the terms of the Foundation to say Masses *"per se ipsum"* and those in which this requirement was not prescribed or was expressly dispensed with by the Founder, as discussed in the quotation from Pitonius, *De Controversiis Patronorum* (Petitioner's Brief, pp. 23, 24, where the citation should be to Vol. 1, p. 273, not 275).

(c) The effect of the present Canon 1417 in preserving the effect of conditions originally imposed by the Founder "even contrary to the common law" (Petitioner's Brief, pp. 24, 25).

(d) The fact that the appeal to Rome, upon which Respondent's Counsel lays so much stress, would have taken the case outside of the territorial jurisdiction of the local Courts and of the United States (See Petitioner's Brief, pp. 25, 26).

Whatever may have been the local law on this point before the cession, it is well established in English and American jurisprudence, the influence of which has been increasingly felt in the Philippines since the American occupation, that appeals to any tribunal outside the national jurisdiction are contrary to the national policy. This has been true since "the two statutes of *Praemunire*, which attempted to check, in the interests of patrons and of the State, the abuses of Papal patronage" (Holdsworth's History of English Law, Vol. I, p. 585). These two statutes (27 Edward III. St. 1, c. 1, and 15 Richard II, c. 5) were long prior to the separation of the Church of England from the Church of Rome. Professor Holdsworth (Vol. I, p. 587) says "The first Statute of *Praemunire* punished those who drew 'any out of the Realm in Plea whereof the cognizance pertaineth to the King's Court'." The reason is plain. If the local ecclesiastical tribunal acts in derogation of a civil right, the local civil courts may grant any redress which may be proper. But the local civil courts cannot reach by their process a higher ecclesiastical tribunal outside of their jurisdiction and of the national jurisdiction.

It is significant that in the article in Alcubilla's Diccionario on "*Jurisdiccion Eclesiastica*" (Vol. 6, p. 731) the

enumeration of ecclesiastical courts includes a court held by or under the authority of the Papal Nuncio—the *"Tribunal de la Rota de la Nunciatura"*,—but makes no mention of any further appellate recourse.

In the cases of *The State ex rel. McNeill* vs. *Bibb Street Church,* 84 Ala. 23 and *German Reformed Church* vs. *Seibert,* 3 Pa. St. 282, cited at page 45 of Respondent's Brief, there is no suggestion that the appellate tribunals of the Church were outside of the jurisdiction of the Court.

V. The Importance of This Case.

Respondent's learned counsel does not exaggerate the importance of this case. He states in his Brief (p. 31) and it appears from the Record that there are about 190 other Chaplaincies of this general nature in the Philippine Islands. It is highly probable that many of them have been kept vacant as this one has and their revenues applied to the general uses of the Church. The question before this Court is not only whether Raul Rogerio Gonzalez is to be appointed to this Chaplaincy or is to receive the whole or any part of its revenues, past or future, but also whether as a descendant and representative of the original Foundress he is entitled, and in like manner whether the descendants of other Founders similarly situated are entitled, to require through the Civil Courts that the revenues of the Foundations be applied to the specific purposes contemplated by the Founders, or whether the Church is at liberty to deal with these revenues in its absolute and uncontrolled discretion. This is a typical case; the facts are fully before the Court, and whether as an individual suit or as a class suit this litigation offers ample opportunity for this Court to lay down rules which will

enable the Philippine Courts to administer justice in this and similar controversies. All great ecclesiastical organizations of whatever form or Faith have a tendency, demonstrated by the whole course of history, to absorb property and to deal with it as they see fit. Where they receive property for their general purposes it is not for the Civil Courts to determine how they shall employ it or otherwise to control them in matters purely ecclesiastical or spiritual, but where property has been entrusted to the possession and control of ecclesiastical authorities for a specific and definite purpose it is within the power and jurisdiction of the Civil Courts to require that such purpose be fulfilled.

True it is that in the case at Bar this property was in 1820 "segregated from temporal properties and transferred to the spiritual properties of this Archbishopric" (Rec., p. 53) and made "subject to the ecclesiastical forum and jurisdiction" (Rec., p. 57). It does not appear whether in 1820 in the Philippine Islands there were ecclesiastical Courts having jurisdiction to determine questions relating to encumbrances upon real property or trust relations attached thereto. At that time Church and State were one and it may well be that there were ecclesiastical Courts with such powers, incidental to their general jurisdiction over Benefices. It will hardly be contended that at the present time in any place under the jurisdiction of the United States any tribunal other than the regular Civil Courts can determine actual property rights by its decree. As was said in *United States* vs. *Smith,* 39 Phil. Rep. 533, 536:

> "It would thus be preposterous to suppose that, with a change of sovereignty which has caused a complete separation of Church and State and the abolition of all special privileges for a particular

> religious sect, the Courts would sanction any higher prerogatives for a Church official than they would for any citizen."

Unless such a suit as this can be maintained and some appropriate relief afforded therein, the parties interested in enforcing the performance of the obligations arising out of these ancient Foundations are wholly without remedy.

Spain met the problem, as it affected the Peninsula, by disamortizing these Foundations and turning the properties back to those most nearly standing in the shoes of the Founders (Petitioner's Brief, pp. 20, 21). They were not handed over to the Church for its general use.

The problem in the Philippines arising out of the great accumulations of agricultural lands in the hands of the monastic orders was met by the purchase of the "Friar Lands" by the United States at a cost of some $7,000,000 (See Administration of Philippine Lands; Report by the Committee on Insular Affairs, House of Representatives, 61st Congress, 3rd Sess., to accompany House Resolution 795. Government Printing Office, 1911, Vol. I, pp. xxiii, xxiv).

The problems arising out of these Chaplaincies can apparently be dealt with only through the Courts, and this case paves the way for their fair and just solution.

Conclusion.

The judgment under review should be reversed and appropriate relief afforded as more fully set forth in Petitioner's Brief.

Respectfully submitted this 6th day of April, 1929.

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